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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 276

CARY D. LANDIS, INDIVIDUALLY AND AS ATTORNEY GENERAL OF THE STATE OF FLORIDA, ET AL.,

Appellants,

vs.

GENE BUCK, INDIVIDUALLY AND AS PRESIDENT OF THE AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS, ET AL.

BRIEF IN SUPPORT OF MOTION OF APPELLANT STATE'S ATTORNEYS TO VACATE DECREE OF LOWER COURT AND DIRECT DISMISSAL OF BILL OF COMPLAINT.

TYRUS A. NORWOOD,
Assistant Attorney General
of the State of Florida.
LUCIEN H. BOGGS,
ANDREW W. BENNETT,
Attorneys for Appellant State's Attorneys.

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The Opinion of the Court Below.

The only opinion of the lower court—a three-judge Federal court sitting as United States District Court for the Northern District of Florida—with which this brief is concerned is that contained in the court's order of July 11, 1938, which has not yet been officially reported. A copy is attached as Exhibit "F" to the motion to which this brief is addressed.

The Jurisdiction of the Supreme Court.

There has been separately filed the statement as to jurisdiction required by paragraph 1 of Rule 12, which shows

the jurisdiction of this Court over the appeal itself. Juri diction to entertain the instant motion rests in the inhere power of the Court to save itself from the decision of co troversies which have become moot.

Statement of the Case.

Hereafter in this brief the appellants and the appellee will be referred to as defendants and plaintiffs, the statu which, respectively, they occupied in the court below.

Plaintiffs filed their bill in the District Court to enjoin the enforcement of a State statute alleged to be repugnant to the Federal Constitution. Chapter 17807, Acts of Florida, 1937 (Motion,* Ex. "G."). The defendants were Cary D. Landis, then Attorney General of the State of Florida, and the fifteen State's Attorneys, each of them a prosecuting officer for one of the judicial circuits of Florida. Plaintiffs' motion for temporary injunction was heard before the three-judge court March 3, 1938, and resulted in the granting of an order on April 4, 1938, for a temporary injunction restraining the defendants from enforcing the State statute.

From that order defendants appealed to this Court, pursuant to *U. S. C., Tit. 28, Sec. 780*, the order allowing the appeal being entered April 25, 1938.

On May 10, 1938, defendant Cary D. Landis, Attorney General of Florida, died (see suggestion of death filed in this Court contemporaneously with the motion of the appellants); and, on May 16, 1938, George Couper Gibbs became the duly appointed, qualified, and acting Attorney General of Florida.

Thereafter on May 31, 1938, the defendant State's Attorneys filed in the District Court suggestion of the death of

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* The word "Motion", appearing in brackets at numerous places in this brief, refers to the motion filed by the appellant State's Attorneys to vacate the decree of the lower court and direct dismissal of the bill.

Landis, and a motion to dismiss the suit on the ground that the question involved in the suit had become moot for want of a necessary party (Motion, Exs. "A" and "B").

Thereafter on July 11, 1938, plaintiffs moved the District Court for leave to file a supplemental bill wherein they sought to implead as a party defendant the successor Attorney General of Florida, George Couper Gibbs (Motion, Ex. "C"). Attorney General Gibbs filed special appearance and objections to being made party defendant (Motion, pp. 5-7, Ex. "D"), with a supporting affidavit in which he denied categorically that any proceedings were pending or threatened looking to the enforcement of the statute. At the same time the defendant State's Attorneys also filed their objections to the proposed substitution of Attorney General Gibbs (Motion, Ex. "E"). These several motions and objections were heard before the three-judge court July 11, 1938, and resulted in an order which denied defendant State's Attorneys' motion to dismiss and denied plaintiffs' motion for leave to file supplemental bill (Motion, Ex. "F").

Since the entry of the last mentioned order the defendant State's Attorneys have perfected their appeal by filing in this Court their transcript of record, statement as to jurisdiction, statement of points relied upon, and designation of parts of the record to be printed. After so doing they further filed in this Court a suggestion of the death of Attorney General Landis, and the motion to which this brief is addressed.

Argument.

This brief contains no specifications of assigned errors (Rule 27, par. 2 (e)), because its object is not to induce this Court to correct the "error" of the District Court in refusing to dismiss the suit upon the death of Judge Landis. Federal appellate statutes would not permit such a procedure. The purpose of the motion, and of this brief,

is to show that since the death of Judge Landis there exists no controversy calling for the exercise of the judicial power.

The procedure invoked by the motion—viz., to remand the cause with directions to dismiss the bill without prejudice—has been repeatedly followed by this Court in cases where the question involved in the appeal has become moot.

Warner Valley Stock Co. v. *Smith*, 165 U. S. 28;
Alejandrino v. *Quezon*, 271 U. S. 528;
Berry v. *Davis*, 242 U. S. 468;
Heitmuller v. *Stokes*, 256 U. S. 359;
Atherton Mills v. *Johnston*, 259 U. S. 13;
Board of Flour Inspectors v. *Glover*, 161 U. S. 101;
Public Utility Commrs. v. *Compania General de Tabacos*, 249 U. S. 425;
Duke Power Co. v. *Greenwood County*, 299 U. S. 259.

The defendant State's Attorneys, who are the sole surviving appellants in this cause, contend that their motion makes out a perfect case for the application of this procedure because:

(1) Under the Florida statute challenged by this suit the only necessary party defendant was the person filling the office of Attorney General of Florida, since no action looking to its enforcement might be taken save such as he might direct.

(2) The suit, while styled against Landis "individually and as Attorney General of the State of Florida", was in reality an action brought against him individually, and it died with him.

These contentions embody a position taken consistently by the defendant State's Attorneys at all times since the death of Judge Landis, as plainly appears from the proceedings had in the court below, all of which are incorporated by reference in the motion.

Point I.

The person occupying the office of Attorney General of Florida was the only necessary party defendant to this suit.

The statute attacked by the bill of complaint in this case is Chapter 17807, Laws of Florida, 1937 (Motion, Ex. "G"). For present purposes it may be described briefly as a statute declaring unlawful any combination comprising a substantial number of those owning public performance rights in copyrighted music, if such combination is formed for price-fixing purposes; forbidding the operation of such combinations in the State of Florida, and prescribing penalties both civil and criminal for violation. The wording of the following portions of the statute is material to the consideration of the point under discussion (Motion, p. 25):

> "Section 9. The several Circuit Courts of this State shall have jurisdiction to prevent and restrain violations of this Act, and, on the complaint of any party aggrieved because of the violation of any of the terms of this Act anywhere within this State, it shall be the duty of the State's Attorneys in their respective circuits, **under the direction of the Attorney-General**, to institute proceedings, civil or criminal or both, under the terms hereof, against any combination as defined in Section 1 hereof, and against any of its members, agents or representatives as herein defined, to enforce any of the rights herein conferred, and to impose any of the penalties herein provided, or to dissolve any such combination as declared unlawful by Section 1 hereof. * * *." (Emphasis supplied.)
>
> "Section 10-B. In the event of the failure of the State's Attorney and Attorney-General to act promptly, as herein provided, when requested so to do by any aggrieved party, then such party may institute a civil proceeding in his own behalf, or upon behalf of Plain-

tiff and others similarly situated, as the State's Attorney and the Attorney General could have instituted under the terms of this Act."

The question is, what is the meaning of the phrase "under the direction of the Attorney General" as used in Section 9?

To answer this question it is not necessary to go further than the decision of this Court in *Warner Valley Stock Co. v. Smith, supra.* That was a suit in equity brought against Hoke Smith, Secretary of the Interior, and Silas W. Lamoreux, Commissioner of the General Land Office, to enjoin them from interfering with the alleged rights of the Warner Valley Stock Company to certain lands in Oregon, and to require them to issue to it patents for those lands. Pending an appeal to this Court, defendant Hoke Smith resigned his office as Secretary of the Interior, and the question before the Court was whether under those circumstances the suit might further proceed.

As in the case at bar, the defendant whose office had become vacant was not the only defendant, and, as here, the contention was made that the case could not proceed against his co-defendant. Under Federal statutes then in force the Commissioner of the General Land Office was required to

> "* * * perform, **under the direction of the Secretary of the Interior**, all executive duties appertaining to the surveying and sale of the public lands of the United States, or in any wise respecting such public lands, and also such as relate to private claims of land, and the issuing of patents for all grants of land under the authority of the government * * *." (Emphasis supplied.)

Construing the statutory phrase, "under the direction of the Secretary of the Interior", the Court said (165 U. S. 34, 35):

"The phrase 'under the direction of the Secretary of the Interior,' thus used in these statutes, as was said by Mr. Justice Lamar, speaking for this court, 'is not meaningless, but was intended as an expression in general terms of the power of the Secretary to supervise and control the extensive operations of the Land Department, of which he is the head. It means that, in the important matters relating to the sale and disposition of the public domain, the surveying of private land claims and the issuing of patents thereon, and the administration of the trusts devolving upon the government by reason of the laws of Congress or under treaty stipulations, respecting the public domain, the Secretary of the Interior is the supervising agent of the government to do justice to all claimants and preserve the rights of the people of the United States.' *Knight* v. *United Land Asso.*, 142 U. S. 161, 177, 178 (35: 974, 979, 980); *Orchard* v. *Alexander*, 157 U. S. 372 (39: 738)."

. . . . . .

"* * * the relief asked against the Commissioner of the General Land Office was only incidental, and by way of restraining him from executing the orders of his official head. **To maintain such a bill against the subordinate officer alone, without joining his superior whose acts are alleged to have been unlawful, would be contrary to settled rules of equity pleading.** 3 Calvert, Parties (2d ed.), chap. 13." (Emphasis supplied.)

Applying this definition to the phrase "under the direction of", this Court thereupon reversed the decree of the lower court, and directed that the bill be dismissed for want of proper parties.

There is nothing in the Constitution or laws of the State of Florida which would justify a construction of the phrase "under the direction of" different from that placed upon it by this Court in the *Warner Valley* case.

The State's Attorneys in Florida are constitutional officers, but the Florida Constitution (Art. V, Sec. 15) leaves

the designation of their duties entirely to legislative enactment.

> "SECTION 15. The Governor, by and with the consent of the Senate, shall appoint a State Attorney in each judicial circuit, whose duties shall be prescribed by law, and who shall hold office for four years."

Therefore, it was competent for the Legislature to prescribe, as it did in this case, that the State's Attorneys could take no action looking to the enforcement of the statute except upon direction from the Attorney General.

The Attorney General, too, is a constitutional officer, but here again the Legislature is given power to fix the duties of the office (Fla. Const., Art. IV, Sec. 22).

It has been held by the Supreme Court of Florida that, as the successor of the British Attorney General, he is also clothed with all of the powers which at common law were vested in that officer of the English Crown.

State v. *Gleason*, 12 Fla. 190, 213;
State v. *Kress & Co.*, 115 Fla. 189, 155 So. 823.

The law is clear that in the absence of constitutional or statutory restrictions the Attorney General may himself conduct such criminal prosecutions as he sees fit.

5 *Am. Jur.* 252, and numerous cases there cited;
State v. *Finch*, 128 Kan. 665, 280 Pac. 910, 66 A. L. R. 1359;
State ex rel. Young v. *Kent*, 96 Minn. 255, 104 N. W. 948, 1 L. R. A. (N. S.) 826;
State ex rel. Young v. *Robinson*, 101 Minn. 277, 112 N. W. 269, 20 L. R. A. (N. S.) 1127.

Far from restricting the common law powers of the Attorney General, the Florida statute (C. G. L. 1927, Sec. 125) expressly preserves to him all such powers:

> "* * * **he shall have and perform all such powers and duties incident or usual to such office** * * *."
> (Emphasis supplied.)

The power of the Attorney General under the Constitution to conduct prosecutions himself has been expressly recognized by the Florida Legislature. Chapter 11828, Acts of 1927 (C. G. L. 1927, Secs. 134-139, incl.), provided for the appointment of three special assistants to the Attorney General who were given power to prosecute actions in the name of the State of Florida to like effect as the State Attorneys. Section 5 of that Act (*ibid.*, Sec. 138) contained this significant clause:

> "Nothing in this law shall be held or construed to impair **the constitutional powers of the Attorney General to personally appear at and conduct any case civil or criminal** * * *." (Emphasis supplied.)

This statute is now repealed (Ch. 14556, Acts 1929, extra. sess. Sec. 1), but the legislative construction of the constitutional powers of the Attorney General, of course, remains unimpaired.

It is a cardinal rule of statutory construction that significance and effect shall, if possible, be accorded to every word in the statute under construction.

Market Co. v. *Hoffman*, 101 U. S. 112, 115;
Ex parte Public National Bank, 278 U. S. 101, 104.

Since the words "under the direction of the Attorney General" are to be given significance and effect, they can only be construed in their ordinary meaning, viz: that prosecutions under this Act may be begun only at the command, or with the express permission, of the Attorney General. If prosecutions under this Statute could be instituted by the State Attorneys without the Attorney General's permission, then the above quoted phrase is meaningless. We submit that an information charging a violation of this Statute, which did not show that it was filed with permission of the Attorney General, would be subject to a motion to quash.

The Florida statutes further provide (C. G. L. 1927, Sec. 131):

> "The Attorney-General shall exercise **a general superintendence and direction** over the several State attorneys of the several circuits as to the manner of discharging their respective duties, and whenever requested by the State attorneys, shall give them his opinion upon any question of law." (Emphasis supplied.)

At the hearing before the three-judge court, plaintiffs cited this section and contended that the clause in the statute under attack placing all proceedings for the enforcement under the direction of the Attorney General was merely declaratory of pre-existing law.

The wording of Sec. 131, C. G. L., does not support their contention, for in that statute the direction to be exercised by the Attorney General is qualified—"the Attorney General shall exercise a **general** superintendence and direction over the several State Attorneys". That is a very different thing from saying, as is done in Chapter 17,807, that "it shall be the duty of the State's Attorney in their respective circuits, **under the direction of the Attorney General**, to institute proceedings". Under well-known rules of statutory construction due weight must be given to the word "general" in the older statute. The term "general" is defined by Webster's Twentieth Century Dictionary (1935) as follows:

> "Extensive though **not universal**; not limited in scope; used of authority conferred, etc." (Emphasis supplied.)

This definition has been accepted in a number of reported cases. See especially *Blair* v. *Howell*, 68 Iowa 619, 28 N. W. 199, 200.

None of the numerous statutes dealing with the powers and duties of State's Attorneys (see especially C. G. L.

1927, Secs. 4739-4747, incl.) suggest any limitation on the constitutional power of the Attorney General himself to conduct prosecutions.

Thus, at the time of the enactment of Chapter 17,807, Laws of Florida, 1937 (the statute here challenged), we find the Attorney General vested by the Constitution and Laws of the State with authority as its chief law officer both to prosecute cases in the interest of the State personally and to give general superintendence and direction to State Attorneys in the conduct of such cases. Viewed in this broad prospective, it is obvious that the function of the clause "under the direction of the Attorney General" is to place a special limitation on the powers of the State Attorneys, one not applicable in general to the performance of their duties. In other words, "under the direction of the Attorney General" operates as a special limitation on Sec. 4739, C. G. L. 1927, which makes it the duty of the State Attorney,

> "* * * to appear in the circuit court within his judicial circuit, and prosecute or defend on behalf of the State all suits, applications or motions, civil or criminal, in which the State is a party."

Manifestly the legislative policy was, that while the prosecution of ordinary crimes and offenses might be initiated by the State Attorney subject only to the general supervisory powers of the Attorney General, in prosecutions under Chapter 17,807, the State Attorney was not authorized to move at all except at the Attorney General's direction. This construction is corroborated by sec. 10-B of Chapter 17,807, copied above, which provides that "in the event of the failure of the State's Attorney *and* Attorney General to act promptly * * * when requested so to do by any aggrieved party" then such party may himself

institute such civil proceeding as the "State's Attorney *and* the Attorney General could have instituted."

The statute exercised the legislative power in a new field. Never before had the State of Florida attempted to prescribe any regulation concerning the sale or licensing of public performance rights under copyrights within its borders—a problem which by its very nature was State-wide in scope. Not only was it important that a uniform policy of enforcement should be maintained but also that the directing officer should have at his command the amplest facilities for gathering and collating the necessary facts upon which the decision to prosecute or not to prosecute must be based. It was natural and proper that the legislature should wish to centralize all enforcement proceedings in the highest law officer of the State.

Unlike the situation in *Gorham Mfg. Co.* v. *Wendell*, 261 U. S. 1, there is in Florida no enabling act permitting the substitution of successor State officers, and no court decision holding that they may be substituted without the consent of the successor officers.

To recapitulate: the construction of the phrase "under the direction of the Attorney General" for which appellants contend is in accordance with the plain and ordinary meaning of the words, in harmony with the Constitution and statute law of Florida, and is based upon a comprehensible legislative policy. When this construction is applied, it is readily seen that the person occupying the office of Attorney General of Florida is the only necessary party to such a suit as the plaintiffs have brought. The State's Attorneys are powerless to act save under the direction of the Attorney General while he could act without them. The State's Attorneys occupy precisely the status of the Commissioner of the General Land Office in *Warner Valley Stock Co.* v. *Smith, supra.*

Point II.

The suit, while styled against Landis "individually and as Attorney General of the State of Florida", was in reality an action brought against him individually, and it died with him.

In *Ex Parte Young*, 209 U. S. 123, this Court was called upon to determine whether a suit brought against the Attorney General of Minnesota to enjoin him from enforcing the provisions of a State statute alleged to be unconstitutional was a suit against the State or one against the individual who occupied the office of Attorney General. After a full review of the authorities, the Court decided it was a suit against the individual and not against the State; hence not in violation of the Eleventh Amendment to the Federal Constitution. That principle has been repeatedly followed in later decisions, and there can be no dispute about it now. That doctrine, however, has consequences that are ineluctable. The suit not being against the State, it follows that upon the separation of the person in question from his public office, whether by death, expiration of term, or resignation, the action against him must abate.

Warner Valley Stock Co. v. *Smith, supra;*
Bernardin v. *Butterworth*, 169 U. S. 600;
Chandler v. *Dix*, 194 U. S. 590;
Pullman Co. v. *Croom*, 231 U. S. 571;
Richardson v. *McChesney*, 218 U. S. 487;
Pullman Co. v. *Knott*, 243 U. S. 447;
Irwin v. *Wright*, 258 U. S. 219;
Gorham Mfg. Co. v. *Wendell, supra.*

The principle applied to suits against State and Federal officers alike. In *Bernardin* v. *Butterworth, supra*, this Court pointed out the inconvenience resulting from the application of the doctrine to Federal officers, and this resulted

in the enactment by Congress of the Act of February 8, 1899 (30 Stat. 822), which was subsequently incorporated in *U. S. C., Tit. 28, Sec. 780.*

Later in *Irwin* v. *Wright, supra,* this Court suggested that the Act of February 8, 1899, might be enlarged so as to permit the substitution of State officers in proper cases. Pursuant to that suggestion, by the Act of February 13, 1925 (43 Stat. 941), Congress provided that the successors to State officers might be impleaded in proper cases. The last mentioned statute now appears as Subsection (b) of *U. S. C., Tit. 28, Sec. 780, supra.*

In the enactment of this legislation consideration was given to the fact that not in all cases could substitution be made, for Subsection (a) of Sec. 780 contains the limitation—

> "* * * if * * * it be satisfactorily shown to the Court that there is a substantial need for so continuing and maintaining the cause and obtaining an adjudication of the questions involved."

Subsection (c) of Sec. 780 prescribes that before any substitution is made the officer to be affected—

> "* * * unless expressly consenting thereto, must be given reasonable notice of the application therefor and accorded an opportunity to present any objection which he may have."

The effect of these limitations came up squarely for consideration in *Ex parte LaPrade*, 289 U. S. 444, decided May 22, 1933 (the case upon which in the case at bar the three-judge Federal Court rested its decision to deny plaintiffs' motion for leave to file supplemental bill impleading Judge Gibbs as successor Attorney General to Judge Landis, deceased).

In that case, one Peterson, then Attorney General of Arizona, was sued in equity by two railroad companies with

the object of enjoining him from enforcing an Arizona statute which prescribed limitations of length of freight and passenger trains operating in that State. Shortly prior to final hearing before the three-judge court, Peterson's term of office expired, and LaPrade succeeded him in office. Under the supposed authority of *U. S. C., Tit. 28, Sec. 780*, the plaintiffs served LaPrade with notice of intention to substitute him as defendant in place of Peterson. LaPrade filed special appearance and objections and, these being overruled, the lower court entered final decree enjoining LaPrade from enforcing the statute. LaPrade's objections were to the effect that the suit being against his predecessor individually, the questions involved became moot upon expiration of the latter's term of office; that, there being no pleading charging him with having threatened to enforce the statute, there was no cause of action against him.

After the entry of final decree LaPrade petitioned this Court for a writ of mandamus to require the court below to dismiss the suits. The petition was granted and writ ordered to issue accordingly. In the course of its opinion this Court said (289 U. S. 458):

> "When construing the section, it is to be borne in mind that Congress has authority to direct the conduct of federal officers in proceedings brought by or against them as such and may ordain that they may sue or be sued as representatives of the United States and stand in judgment on its behalf (Interstate Commerce Commission *v.* Oregon-Washington R. & Nav. Co., 288 U. S. 14, 27, *ante*, 588, 597, 53 S. Ct. 266) **but that Congress is not so empowered as to state officers.** The section is merely permissive; it does not require but merely authorized the court to order substitution in the cases covered. It extends only to suits 'relating to the present or future discharge of • • • official duties.' At least as to state officers it does not

purport to authorize the imposition of liability or restraint upon the successor on account of anything done or threatened by the predecessor individually." (Emphasis supplied.)

. . . . . .

"Petitioner might hold, as plaintiffs maintain, that the statute is unconstitutional and that, having regard to his official oath, he rightly may refrain from effort to enforce it."

In a subsequent portion of the opinion (p. 459) the Court quoted from the opinion of Chief Justice Taft in *Gorham Mfg. Co.* v. *Wendell, supra,* to the following effect:

"'The inherent difficulty in all these cases is not in the liability and suability of the successor in a new suit. It is in the shifting from the personal liability of the first officer for threatened wrong or abuse of his office to the personal liability of his successor when there is no privity between them, as there is not if the officer sued is injuring or is threatening to injure the complainant, without lawful official authority. There is no legal relation between the wrong committed or about to be committed by the one, and that by the other.'"

To meet this decision plaintiffs, in the case at bar, filed motion for leave to file supplemental bill of complaint (Motion, Ex. "C") in which they alleged in general terms that successor Attorney General Gibbs was continuing in the course of conduct of his predecessor Landis and was threatening to enforce, and unless restrained by injunction would enforce the State statute complained of. Neither the motion nor the proposed supplemental bill tendered therewith gave any detail as to the time, place, or manner of making such threats, or to whom they were made.

In response to this motion the new Attorney General Gibbs, filed special appearance and objections with his own

supporting affidavit (Motion, Ex. "D", pp. 12, 13). That affidavit contains the following statement:

> "• • • I assert most positively and without qualification that I have never threatened to enforce said State statute or any provision thereof at any time, either against the plaintiffs in said suit or any other persons whomsoever, either upon the contingencies referred to in said supplemental bill or otherwise; nor am I now making such threats or any of them; nor have I directed or authorized any of the parties defendant to said cause to take or to threaten to take any such action against any person, firm, association, or corporation whomscever."

It is submitted that the circumstantial and unqualified statements thus made by the present incumbent in the office of the Attorney General of Florida fully meet the reservation contained in *Ex parte LaPrade, supra* (289 U. S. 459):

> "We have no occasion to decide whether or in what circumstances a successor in office who adopts the attitude of his predecessor and is proceeding or threatening to proceed to enforce the statute may be substituted in a pending suit. That question is not here and is reserved."

The lower court correctly decided that it could not disregard these positive statements of the chief law officer of the State of Florida in favor of the general and loosely worded allegations of the motion for leave to file supplemental bill.

It should be noted in this connection that in *Ex parte LaPrade*, this Court in making the reservation quoted above gave no indication whatever as to the ruling it would make if the successor State officer had adopted the conduct of his predecessor.

No comfort may be had by the plaintiffs (here appellees) from the recent decision of this Court in *Allen v. Regents of University System of Georgia*, 38 Sup. Ct. 980, — U. S.

—, 82 Law Ed. Adv. Op. 975, decided May 23, 1938. In that case it was the substitution of a Federal officer that was involved, not a State officer. In the portion of the *LaPrade* opinion quoted above the power of Congress to control such substitution of Federal officers was sharply contrasted with its lack of power to do so in the case of State officers. Moreover, in the *Allen* case, the answer of the successor officer did not deny the allegation that, unless restrained, he would continue in the course pursued by his predecessor. In these two respects the *Allen* case is amply differentiated from the one at bar.

Conclusion.

In the preceding portion of this brief it has been demonstrated that the only person having power to institute proceedings looking to the enforcement of the statute challenged is the Attorney General of Florida; that the only allegations made as to the conduct of the successor officer are vague and general allegations which have been met specifically in the affidavit of the present Attorney General of Florida denying that any steps have been taken by him or under his direction looking to the enforcement of the statute, and denying that any threats have been made by him or under his authority looking to that end.

Under these circumstances there is no basis for the substitution of Judge Gibbs as a party defendant, and the case, presenting only a moot question, should be dismissed.

Respectfully submitted,

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